



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Memorial Compounding Pharmacy

Respondent Name

Commerce & Industry Insurance Company

MFDR Tracking Number

M4-17-3375-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

July 19, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "We have submitted our request for reconsideration and appeal for the above date of service and have not received payment."

Amount in Dispute: \$602.67

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The Carrier maintains its position of non-payment for the date of service in question because the Provider failed to obtain pre-authorization ... The prescribed compound medications are experimental with few controlled trials to determine their efficacy of safety. Based on the retrospective review(s) ... the prescribed medications are not medically necessary."

Response Submitted by: AIG

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
December 28, 2016	Pharmacy Service – Compound	\$602.67	\$602.67

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 sets out the procedures for resolving medical disputes.
2. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
3. 28 Texas Administrative Code §133.240 sets out the procedures for payment or denial of a medical bill.
4. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical services.
5. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.

6. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - X977 – Unnecessary medical treatment and or service

Issues

1. Did Commerce & Industry Insurance Company (Commerce & Industry) raise a preauthorization issue in accordance with 28 Texas Administrative Code §133.307?
2. Is Commerce & Industry's reason for denial of payment for the compound in question supported?
3. Is Memorial Compounding Pharmacy (Memorial) eligible for reimbursement for the disputed services?

Findings

1. In its position statement, AIG argued on behalf of Commerce & Industry, "The Carrier maintains its position of non-payment for the date of service in question because the Provider failed to obtain pre-authorization."

28 Texas Administrative Code §133.307(d)(2)(F) states, in relevant part, "The response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review."

Review of the submitted documentation does not find that Commerce & Industry presented preauthorization in accordance with 28 Texas Administrative Code §133.240 as a reason for denial of payment to Memorial prior to the date the request for medical fee dispute resolution (MFDR) was filed. The division concludes that this defense presented in AIG's position statement shall not be considered for review because this assertion constitutes a new defense pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

2. Memorial is seeking reimbursement of \$602.67 for a compound dispensed on December 28, 2016, consisting of the following ingredients:

Ingredients	Amount
Versapro Cream	43.68 gm
Ethoxy Diglycol	3.6 ml
Bupivacaine HCl	1.2 gm
Flurbiprofen	4.8 gm
Amantadine HCl	4.8 gm
Amitriptyline HCl	2.4 gm
Gabapentin USP	3.0 gm

Commerce & Industry denied the disputed compound with claim adjustment reason code X977 – "UNNECESSARY MEDICAL TREATMENT AND OR SERVICE." In its position statement, AIG argued, "Based on the retrospective review(s) ... the prescribed medications are not medically necessary."

28 Texas Administrative Code §133.240(q) states that the insurance carrier is required to comply with 28 Texas Administrative Codes §§19.2009 and 19.2010 when denying payment based on an adverse determination, "including the requirement that prior to issuance of an adverse determination the insurance carrier shall afford the health care provider a reasonable opportunity to discuss the billed health care with a doctor or, in cases of a dental plan or chiropractic services, with a dentist or chiropractor, respectively."

Review of the submitted documentation finds that Commerce & Industry submitted a document dated March 31, 2017 as support for a retrospective review of the disputed compound. The division concludes that the submitted documentation does not support that Commerce & Industry performed a retrospective utilization review of the service in question for the following reasons:

- This document was not performed by a utilization review agent, as required by 28 Texas Administrative Code §133.240,

- This document does not indicate or support that the health care provider – in this case, Memorial Compounding Pharmacy – was notified of the findings, or that Memorial was afforded a reasonable opportunity to discuss the billed compound, and
- This document is not specific to the compound in this dispute.

Commerce & Industry also submitted a document dated April 25, 2017 as support for a retrospective review of the disputed compound. The division concludes that the submitted documentation does not support that Commerce & Industry performed a retrospective utilization review of the service in question for the following reasons:

- This document does not indicate or support that the health care provider (Memorial) was notified of the findings, or that Memorial was afforded a reasonable opportunity to discuss the billed compound, and
- This document indicates that the compound reviewed was “Ketoprofen Pow/Baclofen Pow/Gabapentin Pow #1,” which is not the compound considered in this dispute.

Commerce & Industry’s denial reason is therefore not sufficiently supported. The disputed services will consequently be reviewed per applicable fee guidelines.

3. 28 Texas Administrative Code §134.503 applies to the compound in dispute and states, in pertinent part:
 - (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
 - (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
 - (A) Generic drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (B) Brand name drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
 - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
 - (A) health care provider; or
 - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2). Each ingredient is listed below with its corresponding reimbursement amount.

Ingredient	NDC & Type	Price/ Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Compounding Fee	NA	\$15.00	1	\$15.00	\$15.00	\$15.00
Versapro Cream	38779252903 Brand Name	\$3.20	43.68 gm	$\$3.20 \times 43.68 \times 1.09 = \152.36	\$109.20	\$109.20
Ethoxy Diglycol	38779190301 Generic	\$0.342	3.6 ml	$\$0.342 \times 3.6 \times 1.25 = \1.54	\$1.23	\$1.23
Bupivacaine HCl	38779052405 Generic	\$45.60	1.2 gm	$\$45.60 \times 1.2 \times 1.25 = \68.40	\$48.02	\$48.02
Flurbiprofen	38779036209 Generic	\$36.58	4.8 gm	$\$36.58 \times 4.8 \times 1.25 = \219.48	\$168.72	\$168.72
Amantadine HCl	38779041105 Generic	\$24.225	4.8 gm	$\$24.225 \times 4.8 \times 1.25 = \145.35	\$61.58	\$61.58

Amitriptyline HCl	38779018904 Generic	\$18.24	2.4 gm	$\$18.24 \times 2.4 \times 1.25 = \54.72	\$42.17	\$42.17
Gabapentin USP	38779246109 Generic	\$59.85	3.0 gm	$\$59.85 \times 3 \times 1.25 = \224.44	\$156.75	\$156.75
Total						\$602.67

The total reimbursement is therefore \$602.67. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$602.67.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$602.67, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Signature	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Laurie Garnes Medical Fee Dispute Resolution Officer	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> September 8, 2017 Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.